

AGREEMENT FOR PRIVATE DEVELOPMENT

By and between

CITY OF KEOKUK, IOWA

and

KEOKUK MILLS, LLC

October ____, 2016

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2016, by and among the CITY OF KEOKUK, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2015, as amended ("Urban Renewal Act") and KEOKUK MILLS, LLC, an Iowa limited liability company having offices for the transaction of business at 3972 Main Street, Keokuk, Iowa 52632 ("Developer"). The City and Developer are the parties to this Agreement.

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Twin Rivers Urban Renewal Area ("Area" or "Urban Renewal Area") which is described in the Amended and Restated Twin Rivers Urban Renewal Plan originally approved by Resolution No. 96-08, adopted April 24, 2008, and which has twice been amended ("Plan" or "Urban Renewal Plan"); and

WHEREAS, a copy of the foregoing Urban Renewal Plan, as amended, has been recorded among the land records in the office of the Recorder of Lee County; and

WHEREAS, Developer is the owner of certain real property located in the foregoing Urban Renewal Area and as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, Developer shall operate its business at the Development Property and commit to hire and retain employees thereon; and

WHEREAS, the City believes that the fulfillment of this Agreement is in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended or supplemented.

Annual Certification means the certification that the Developer must complete and submit to the City each year as described in Section 6.7 of this Agreement and attached as Exhibit F.

Area or Urban Renewal Area shall mean the area known as the Twin Rivers Urban Renewal Area (as amended).

City means the City of Keokuk, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2015, as amended.

Commencement Date means the date of this Agreement.

Developer means Keokuk Mills, LLC, an Iowa limited liability company, and each assignee that assumes in writing all of the obligations of the Developer under this Agreement with the written consent of the City as provided in Section 7.1 of this Agreement.

Development Property means that portion of the Twin Rivers Urban Renewal Area described in Exhibit A.

Event of Default means any of the events described in Section 11.1 of this Agreement that have continued beyond applicable notice and cure periods.

First Mortgage means a mortgage granted to secure any loan made pursuant to a mortgage commitment obtained by Developer from the Lending Bank to fund any of the activities listed in the "Use of Funds" column in Exhibit C to the State Agreement.

Forgivable Loan means the forgivable loan to be made to the Developer under Article IX of this Agreement, which, together with the No Interest Loan, shall act as the local community match for incentives received by Developer under the State Agreement.

Lending Bank means Lincoln Savings Bank and its assignees; and any bank with whom Developer refinances, or from whom Developer obtains new financing, to satisfy its obligations to Lincoln Savings Bank under any First Mortgage.

No Interest Loan means the zero percent interest loan to be made by the City to the Developer under Article IX of this Agreement, which, together with the Forgivable Loan, shall act as the local community match for incentives received by Developer under the State Agreement.

State means the State of Iowa.

State Agreement means the Economic Development Assistance Contract by and among Keokuk Mills, LLC, the City of Keokuk, and the Iowa Economic Development Authority, Contract Number 16-DF/TC-064, a copy of which will be attached hereto as Exhibit G upon execution by the parties.

Termination Date means the date of termination of this Agreement, as established in Section 12.8 of this Agreement.

Urban Renewal Plan means the Amended and Restated Twin Rivers Urban Renewal Plan, as amended, approved with respect to the Twin Rivers Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal limited liability company and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises,

agreements, and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Keokuk Mills, LLC is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

b. This Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally. The Developer's attorney shall provide an enforceability opinion in the form of Exhibit C to be signed concurrently with this Agreement.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or

review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. Developer will occupy the Development Property and maintain its business operations and add and retain employees thereon until at least the Termination Date.

g. Developer would not undertake its obligations under this Agreement without the loans being made to Developer pursuant to this Agreement.

ARTICLE III. RESERVED

ARTICLE IV. STATE AGREEMENT

Section 4.1 Incentives from the Iowa Economic Development Authority. The Developer has been awarded incentives from the Iowa Economic Development Authority through the High Quality Jobs Program. The incentives provided under this Agreement are intended to constitute the local community match that will be described in the State Agreement. The State Agreement, after being executed by the Developer, City and State will be attached as Exhibit G to this Agreement.

Section 4.2 Repayment. Should the City fail to perform under the State Agreement due to an Event of Default by the Developer under this Agreement or another separate agreement entered into between the parties, or by the Developer under the State Agreement, then the Developer shall indemnify and hold the City harmless from any loss, including repayment of any incentives, arising out of or related to the City's failure to fulfill the terms of the State Agreement.

ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. At all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of coverage or the payment of premiums on), insurance as follows:

i. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of \$1,000,000.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

b. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby. In lieu of separate policies, Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein.

ARTICLE VI. COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Development Property. Developer will maintain, preserve, and keep the Development Property (whether owned in fee or a leasehold interest) in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Compliance with Laws. Developer will comply with all state, federal and local laws, rules and regulations relating to the Development Property.

Section 6.3. Non-Discrimination. Developer shall not discriminate against any applicant or employee because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, and employees are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 6.4 Available Information. Upon request, Developer shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

Section 6.5 Reserved.

Section 6.6 Employment. Developer shall fulfill the "Job Obligations" imposed on it by the Iowa Economic Development Authority pursuant to the State Agreement.

Section 6.7 Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, duly authorized officers of Developer shall provide an Annual Certification to the City.

Developer shall annually provide to the City (i) a copy of the certification provided to the State that Developer is in compliance with the Job Obligations (as defined in the HQJP Agreement) pursuant to the State Agreement, as of the Project Completion Date and through the expiration of the Maintenance Period (both as defined in the State Agreement); and (ii) a certification that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by Developer hereunder, or if the signer is aware of any such Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

Such statement, proof and certificates required above shall be provided not later than October 15 of each year, commencing October 15, 2017 and ending on October 15, 2023, both dates inclusive. Developer shall provide supporting information germane to the Annual Certifications upon request of the City. *See* Exhibit F for the form required for Developer's Annual Certifications.

Section 6.8. Term of Operation. Developer shall, through the Termination Date of this Agreement, maintain its operations on the Development Property, including the employee obligations in Section 6.6.

Section 6.9 Security. Prior to the execution of this Agreement, the Developer shall provide the City and the Southeast Iowa Regional Planning Commission ("SEIRPC") a security interest in the Development Property, and personal business property thereon, as security for repayment of all obligations under this Development Agreement. The security interest shall be subordinate ONLY to the interests of the Lending Bank as provided for in a First Mortgage. The City and SEIRPC agree to sign subordination documents as requested by the Lending Bank consistent with this section. The Developer shall execute in favor of the City and SEIRPC such mortgage(s), financing statement(s) and/or security agreement(s) as required by the City and SEIRPC to perfect their security interests, including but not limited to the second mortgage attached hereto as Exhibit E-1 and UCC-1's attached hereto as Exhibit E-2.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property or this Agreement to any other party unless: (i) the transferee partnership, limited liability company, limited liability company or individual assumes in writing all of the then-outstanding obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

7.2 Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, or its successors or assigns, agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property from property tax liability. Nor can the Development Property be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VIII. RESERVED

ARTICLE IX. LOANS

Section 9.1. Forgivable Loan. For and in consideration of the obligations of Developer as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a Forgivable Loan to Developer in the amount of One Hundred Thousand Dollars (\$100,000) (the "Forgivable Loan"). Such loan shall be made as soon as possible after all the Conditions Precedent in Section 9.2 have been completed.

Section 9.2. Conditions Precedent. Notwithstanding the provisions of Section 9.1 above, the City's obligation to grant Developer the Forgivable Loan under this Agreement shall be subject to satisfaction of the following conditions precedent:

(a) Developer shall not be in default under the terms and provisions of this Agreement, including but not limited to the job creation and retention requirements in Section 6.6; and

(b) Developer, the City, and the State shall have entered into the State Agreement and be in compliance therewith; and

(c) Developer shall have executed a Promissory Note in the form attached as Exhibit H-1 (Promissory Note #1); and

(d) Developer shall have executed, in favor of the City, such mortgage(s), financing statement(s) and/or security agreement(s) as required by Section 6.9 of this Agreement and recorded/filed the same with the appropriate government offices; and

(e) Developer shall have paid all ad valorem taxes on the Development Property then due and owing; and

(f) Developer shall have requested, in writing, payment of the Forgivable Loan by the City.

Section 9.3 Forgiveness of the Forgivable Loan.

(a) The Forgivable Loan shall be forgiven at the rate of \$20,000 of the total amount of the Forgivable Loan initially granted to Developer, per year, for five years beginning on December 31, 2018 assuming:

- (i) Developer is in compliance with all terms, conditions and obligations of this Agreement as of the date the loan forgiveness is to be granted, including but not limited to the employment obligations in Section 6.6 and the repayment obligations associated with the No Interest Loan described in Sections 9.7 through 9.11; and
- (ii) Developer shall have paid all ad valorem taxes on the Development Property then due and owing; and
- (iii) Developer has submitted Annual Certifications pursuant to Section 6.7 hereof including all requested information, and the Annual Certifications (or other information) do not indicate that any Event of Default has occurred or is occurring.

The City will, on an annual basis beginning in 2018, make a determination whether Developer is in compliance with the terms, conditions and obligations of this Agreement, and will notify Developer by each December 1 if the Developer does not qualify for that year's loan forgiveness.

Section 9.4. Forgivable Loan Default. If the loan is not forgiven and/or repaid by Developer pursuant to the terms of this Agreement, then an Event of Default has occurred, in which event the City has all the rights under this Agreement and under the terms of the Promissory Note #1.

Section 9.5. Promissory Note.

(a) The Developer will execute a Promissory Note in the form attached as Exhibit H-1 to this Agreement (Promissory Note #1) as a condition precedent to

the grant of the Forgivable Loan (See Section 9.2(c)). The Promissory Note will be reduced by \$20,000 of the initial balance of the Forgivable Loan by each December 31 for five (5) years. The City will provide notice to Developer by December 1 if Developer fails to qualify for that year's loan forgiveness as described in this Article.

(b) Should Developer fail to qualify for loan forgiveness in whole or in part during any year, the entire outstanding balance of the Forgivable Loan will become immediately due and payable within 30 days of the time the City shall send notice to the Developer of Developer's failure to qualify for loan forgiveness. All unpaid sums will accrue interest at the rate of 4% per annum accruing from the date payment is due.

Section 9.6. Cancellation of Promissory Note. The Promissory Note #1 will be cancelled when no outstanding balance of the Promissory Note #1 exists. No outstanding balance will exist upon occurrence of any of the following:

- (a) the entire Forgivable Loan has been forgiven; or
- (b) the Developer has paid the City any portion of the Forgivable Loan that has not been forgiven.

Section 9.7. No Interest Loan. For and in consideration of the obligations of Developer as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a No Interest Loan to Developer in the amount of One Hundred Thousand (\$100,000) (the "No Interest Loan"), which sum, without interest, shall be due and payable in monthly installments. Such loan shall be made as soon as possible after all the Conditions Precedent in Section 9.8 have been satisfied.

Section 9.8. Conditions Precedent. Notwithstanding the provisions of Section 9.7 above, the City's obligation to grant Developer the No Interest Loan under this Agreement shall be subject to satisfaction of the following conditions precedent:

- (a) Developer shall not be in default under the terms and provisions of this Agreement, including but not limited to the job retention requirements in Section 6.6; and
- (b) Developer, the City, and the State shall have entered into the State Agreement and be in compliance therewith; and

(c) Developer shall have executed a Promissory Note in the form attached as Exhibit H-2 (Promissory Note #2); and

(d) Developer shall have executed, in favor of the City, such mortgage(s), financing statement(s) and/or security agreement(s) as required by Section 6.9 of this Agreement and recorded/filed the same with the appropriate government offices; and

(e) Developer shall have paid all ad valorem taxes on the Development Property then due and owing; and

(f) Developer shall have requested, in writing, payment of the No Interest Loan by the City.

Section 9.9. No Interest Loan Default. If the loan is not repaid by Developer pursuant to the terms of this Agreement, then an Event of Default has occurred, in which event the City has all the rights under this Agreement and under the terms of the Promissory Note #2.

Section 9.10. Promissory Note. Developer shall execute a Promissory Note #2 in the form attached as Exhibit H-2 to this Agreement as a condition precedent to the grant of the No Interest Loan (See Section 9.8(c)). The Developer will pay all amounts payable under the Promissory Note #2 in accordance with the terms of the Promissory Note #2 when due, and will timely perform all other obligations of Developer under the Promissory Note #2 and this Agreement. The provisions of the Promissory Note #2 are hereby incorporated into this Agreement as if fully set forth herein.

Section 9.11. Cancellation of Promissory Note #2. The Promissory Note #2 will be cancelled when no outstanding balance of the Promissory Note #2 exists. No outstanding balance will exist when the Developer has paid the City the full amount of the No Interest Loan.

ARTICLE X. INDEMNIFICATION

Section 10.1. Release and Indemnification Covenants.

a. Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article X, the "indemnified parties") from, covenant and agree that the indemnified parties shall not be liable for, and agree to indemnify, defend, and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Development Property.

b. Except to the extent arising from any willful misrepresentation, gross negligence, or any willful or wanton misconduct or any unlawful act of the indemnified parties, Developer agrees to protect and defend the indemnified parties, now or forever, and further agree to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against the City to enforce its rights under this Agreement); (ii) the acquisition and condition of the Development Property; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The indemnified parties shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

d. The provisions of this Article X shall survive the termination of this Agreement.

ARTICLE XI. REMEDIES

Section 11.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

a. Transfer of Developer's interest in the Development Property or this Agreement in violation of the provisions of this Agreement;

d. Failure by Developer to pay ad valorem taxes on the Development Property;

c. Failure by Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, including the Promissory Notes;

d. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;

e. Developer shall:

i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. make an assignment for the benefit of its creditors; or

iii. admit in writing its inability to pay its debts generally as they become due; or

iv. be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or either entity's reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment;

f. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof; or

g. Failure of the State or Developer to execute or perform under the State Agreement.

Section 11.2. Remedies on Default. Whenever any Event of Default referred to in Section 11.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer, as the case may be, under this Agreement; or

d. The City shall be entitled to recover from the Developer the total amount of the Forgivable Loan and the No Interest Loan, with interest as described in this Agreement. The City may take any action, including any legal action it deems necessary, to recover such amounts from Developer;

e. The City shall be entitled to exercise such rights as are made available under the security provided pursuant to Section 6.9; and

f. The City shall be entitled to recover from the Developer, and the Developer shall pay to the City, the full amount of any monies that must be repaid to the State by the City under the State Agreement.

Section 11.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 11.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 11.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the drafting and execution of this Agreement, including, but not limited to publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City, associated with the negotiation, drafting and authorization of this Agreement. Payment by Developer of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs.

b. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the

enforcement or performance or observance of any obligation or agreement on the part of Developer herein contained, and the City prevails in an action to enforce this Agreement, Developer agrees that the defaulting party shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE XII. MISCELLANEOUS

Section 12.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to this project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the project, or in any activity, or benefit therefrom, which is part of the project at any time during or after such person's tenure.

Section 12.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- a. In the case of Developer, is addressed or delivered personally to Keokuk Mills, LLC at 3972 Main Street, Keokuk, Iowa 52632, Attn: Brad Mills;
- b. In the case of the City, is addressed to or delivered personally to the City at 415 Blondeau Street, Keokuk, Iowa 52632, Attn: City Clerk;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 12.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 12.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 12.7 Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 12.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2023, unless terminated earlier under the provisions of this Agreement.

Section 12.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 12.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

[Signatures start on the next page]

(SEAL)

CITY OF KEOKUK, IOWA

By: _____
Tom Marion, Mayor

ATTEST:

By: _____
Jean Ludwig, City Clerk

STATE OF IOWA)
) SS
COUNTY OF LEE)

On this _____ day of _____, 2016, before me a Notary Public in and for said State, personally appeared Tom Marion and Jean Ludwig , to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Keokuk, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

KEOKUK MILLS, LLC

By: _____
Brad Mills, Member

ATTEST:

By: _____
Kenny LeGrand, CFO

STATE OF IOWA)
) SS
COUNTY OF LEE)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Brad Mills and Kenny LeGrand, to me personally known, who, being by me duly sworn, did say that they are the Member and CFO of Keokuk Mills, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Brad Mills and Kenny LeGrand, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT A

DEVELOPMENT PROPERTY

The Development Property is described as follows:

PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 65 NORTH, RANGE 5, WEST OF THE FIFTH PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT A RAILROAD IRON AT THE EAST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 480.1 FEET; THENCE NORTH 34 DEGREES 19 MINUTES WEST, 590.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES WEST, 60.3 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, BEING A RAILROAD IRON MARKING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAYS #61 AND #218 AND THE NORTHEAST PROPERTY CORNER OF THE KEOKUK DIECASTING CO. PROPERTY (FORMERLY OWNED BY EDWARD C. RENARD); THENCE SOUTH 59 DEGREES 41 MINUTES 30 SECONDS WEST, 1,234.00 FEET TO THE NORTHEASTERLY LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 30 DEGREES 53 MINUTES 30 SECONDS WEST WITH SAID RIGHT-OF-WAY LINE, 700.1 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 30 SECONDS EAST, 1,044.00 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAYS; THENCE SOUTH 49 DEGREES 03 MINUTES EAST WITH SAID RIGHT OF WAY 405.00 FEET; THENCE SOUTHEASTERLY 324.3 FEET ALONG A 1,372.5 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE PRECEDING COURSE, TO THE POINT OF BEGINNING, IN THE CITY OF KEOKUK, IN LEE COUNTY, IOWA.

Lee County, Iowa Parcel ID numbers 1044521152000190, 1044521152000120, and 1044521152000130

**EXHIBIT B
RESERVED**

EXHIBIT C
FORM OF LEGAL OPINION (On firm letterhead)

Re: Development Agreement between Keokuk, Iowa (“City”), and Keokuk Mills, LLC (“Developer”)

As counsel for _____ (the “Entity” in this letter) in connection with the execution and delivery of a certain Development Agreement (the “Development Agreement”) between the Entity and the City dated as of _____ 2016 and referenced above, we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- a. The governing documents of the Entity;
- b. Resolution of the Entity at which action was taken with respect to the transactions covered by this opinion;
- c. The Development Agreement (the term “Development Agreement” includes all Exhibits to the “Development Agreement”);

and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Entity is duly organized and validly exists as a _____ under the laws of the State of Iowa and is qualified to do business in the State of Iowa. The Entity has full power and authority to execute, deliver and perform in full the Development Agreement; and the Development Agreement has been duly and validly authorized, executed and delivered by the Entity, and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is valid and legally binding instrument of the Entity enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors’ rights generally.

2. The consummation of the transaction contemplated by the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the operating agreement or any other governing documents of the Entity, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Entity is a party or by which it or its property is bound or subject.

Very truly yours,

EXHIBIT D

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of Keokuk, Iowa (the "City"), and Keokuk Mills, LLC, an Iowa limited liability company ("Developer"), did on or about the ____ day of _____, 2016, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Amended and Restated Twin Rivers Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Twin Rivers Urban Renewal Area.

The Development Property is described as follows:

PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 65 NORTH, RANGE 5, WEST OF THE FIFTH PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT A RAILROAD IRON AT THE EAST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 480.1 FEET; THENCE NORTH 34 DEGREES 19 MINUTES WEST, 590.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES WEST, 60.3 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, BEING A RAILROAD IRON MARKING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAYS #61 AND #218 AND THE NORTHEAST PROPERTY CORNER OF THE KEOKUK DIECASTING CO. PROPERTY (FORMERLY OWNED BY EDWARD C. RENARD); THENCE SOUTH 59 DEGREES 41 MINUTES 30 SECONDS WEST, 1,234.00 FEET TO THE NORTHEASTERLY LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 30 DEGREES 53 MINUTES 30 SECONDS WEST WITH SAID RIGHT-OF-WAY LINE, 700.1 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 30 SECONDS EAST, 1,044.00 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAYS; THENCE SOUTH 49 DEGREES 03 MINUTES EAST WITH SAID RIGHT OF WAY 405.00 FEET; THENCE SOUTHEASTERLY 324.3 FEET ALONG A 1,372.5 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE PRECEDING COURSE, TO THE POINT OF BEGINNING, IN THE CITY OF KEOKUK, IN LEE COUNTY, IOWA.

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2016 and terminates on December 31, 2023, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, Keokuk, Iowa.

[Signatures Start on Next Page]

KEOKUK MILLS, LLC

By: _____
Brad Mills, Member

By: _____
Kenny LeGrand, CFO

STATE OF IOWA)
) SS
COUNTY OF LEE)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Brad Mills and Kenny LeGrand, to me personally known, who, being by me duly sworn, did say that they are the Member and CFO of Keokuk Mills, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Brad Mills and Kenny LeGrand, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT E-1

SECOND MORTGAGE

**MORTGAGE
Recorder's Cover Sheet**

Preparer Information: (name, address and phone number)

Nathan Overberg
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309
Phone: (515) 243-7611

Taxpayer Information: (name and complete address)

Keokuk Mills, LLC
3972 Main Street
Keokuk, Iowa 52632

Return Document To: (name and complete address)

Aaron Burnett
City of Keokuk
415 Blondeau Street,
Keokuk, Iowa 52632

Mortgagor: Keokuk Mills, LLC

Mortgagee: The City of Keokuk, Iowa

Legal Description:

PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 65 NORTH, RANGE 5, WEST OF THE FIFTH PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT A RAILROAD IRON AT THE EAST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 480.1 FEET; THENCE NORTH 34 DEGREES 19 MINUTES WEST, 590.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES WEST, 60.3 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, BEING A RAILROAD IRON MARKING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAYS #61 AND #218 AND THE NORTHEAST PROPERTY CORNER OF THE KEOKUK DIECASTING CO. PROPERTY (FORMERLY OWNED BY EDWARD C. RENARD); THENCE SOUTH 59 DEGREES 41 MINUTES 30 SECONDS WEST, 1,234.00 FEET TO THE NORTHEASTERLY LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 30 DEGREES 53 MINUTES 30 SECONDS WEST WITH SAID RIGHT-OF-WAY LINE, 700.1 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 30 SECONDS EAST, 1,044.00 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAYS; THENCE SOUTH 49 DEGREES 03 MINUTES EAST WITH SAID RIGHT OF WAY 405.00 FEET; THENCE SOUTHEASTERLY 324.3 FEET ALONG A 1,372.5 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE PRECEDING COURSE, TO THE POINT OF BEGINNING, IN THE CITY OF KEOKUK, IN LEE COUNTY, IOWA.

Document or instrument number of previously recorded documents: N/A

This Mortgage secures credit in the amount of \$200,000. Except for and subject to the First Mortgage, as hereinafter defined, loans and advances up to this amount, together with interest are senior to indebtedness of other creditors under subsequently recorded or filed mortgages and liens.

THIS MORTGAGE encumbers both real and personal property and secures present and future loans and advances.

MORTGAGE

This Second Mortgage and Security Agreement and Fixture Financing Statement (the "Second Mortgage"), dated as of _____, 2016, is between Keokuk Mills, LLC, an Iowa limited liability company ("Keokuk Mills"), as the Mortgagor hereunder (the "Mortgagor"), and the City of Keokuk, Iowa, a municipal corporation organized and existing under the Constitution and the laws of the State of Iowa, as Mortgagee hereunder (the "Mortgagee" or the "City").

WITNESSETH:

WHEREAS, the City is authorized by Iowa Code Chapter 403 and Section 15A.1, as amended (the "Act"), to enter into development agreements and make grants or loans to private persons for economic development purposes within the corporate boundaries of the City; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, by resolution of its governing body, the City has authorized and undertaken to make economic development loans consisting of a No Interest Loan and a Forgivable Loan (collectively, the "Loans") to Keokuk Mills to promote economic development and the creation and maintenance of jobs within the Twin Rivers Urban Renewal Area of the City (the "Project"); and

WHEREAS, in consideration of the Loans, Keokuk Mills has agreed to undertake certain obligations and make certain payments upon the terms and conditions set forth in the Agreement for Private Development dated as of _____, 2016 (the "Development Agreement"), by and between the City and Keokuk Mills, which Development Agreement sets forth the terms and conditions of the Loans including, but not limited to, the principal amount of the Loans; and

WHEREAS, in connection with the Project, Keokuk Mills has previously entered into a [Construction Mortgage, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing] dated _____, 2016 (the "First Mortgage") with Lincoln Savings Bank, a banking corporation organized under the laws of the United States, with respect to the Mortgaged Property described herein; and

WHEREAS, in order to secure the payment by Keokuk Mills of amounts owing under the Development Agreement, the City has required the execution and delivery of this Second Mortgage as a condition precedent to the making of the Loans.

GRANTING CLAUSES

THE MORTGAGED PROPERTY IS MORTGAGED AND CONVEYED BY MORTGAGOR TO MORTGAGEE FOR THE PURPOSE OF SECURING THE PAYMENT AND PERFORMANCE IN FULL, WHEN DUE, OF ALL OF THE FOLLOWING (collectively, the "Secured Obligations"):

- (a) every obligation, covenant or agreement of Mortgagor contained herein, and in the Development Agreement, and all supplements, amendments and modifications thereto and all extensions and renewals of any of the foregoing;
- (b) all sums advanced by Mortgagee to protect the Mortgaged Property, together with interest thereon from the date of the advance at the highest default rate provided in those certain Promissory Notes executed by Mortgagor dated the ____ day of _____ ("the Notes");
- (c) all other sums, with interest thereon, which may hereafter be due from Mortgagor, or its successors or assigns, to Mortgagee, or its successors or assigns, when evidenced by a promissory note or notes executed by Mortgagor.

The Secured Obligations include, and this Mortgage expressly secures, all future advances from Mortgagee to Mortgagor, and all future obligations of Mortgagor to Mortgagee, under this Mortgage or the Development Agreement, whether or not such future advances or future obligations are incurred for any purpose that was related or unrelated to the purpose of this Mortgage. All Secured Obligations, including all future advances and future obligations, are secured by this Mortgage even though all or a part thereof may not yet be advanced as of the date of this Mortgage. Nothing in this Mortgage, however, shall constitute a commitment on the part of Mortgagee to make any additional or future loans or advances in any amount.

NOW, THEREFORE, for the purposes of securing the faithful performance of all covenants, conditions, stipulations and agreements in the Development Agreement and this Second Mortgage contained, and in consideration of the premises, the making of the Loans by the City, and other good and valuable consideration the receipt whereof is hereby acknowledged, the Mortgagor has executed and delivered this Second Mortgage to the Mortgagee and the Mortgagor does hereby grant, bargain, sell, convey, transfer, assign, set over, mortgage, grant a security interest in, and warrant to the Mortgagee, its successors and assigns forever, all of the following described interests, subject only to the First Mortgage and other Permitted Encumbrances as defined herein, in the following described properties, whether now owned or hereafter acquired (herein collectively called the "Mortgaged Property"):

A. All of the tracts or parcels of land (the "Land") located in Lee County, Iowa more particularly described in Exhibit A attached hereto;

B. All buildings, structures, additions, improvements and appurtenances now and at any time hereafter constructed or placed on the Land;

C. All building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land and suitable or intended to be incorporated in any building, structure or other improvement now or hereafter standing on the Land;

D. All fixtures and articles of personal property of every kind and nature that may integrally belong to, be or hereafter become an integral part of the Land, and whether attached or detached, and whether now owned or hereafter acquired by Mortgagor, including, but without limiting the generality of the foregoing, any and all partitions, carpeting, screens, awnings, storm windows, floor coverings, disposal units, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, maintenance equipment, and all heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and air-cooling equipment, gas and electric machinery, and all of the right, title and interest of the Mortgagor in and to any fixtures which may be subject to any title retention or security agreement superior in lien to the lien of this Second Mortgage, and all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing, all of which shall be construed as fixtures and will be conclusively construed, intended and presumed to be a part of the foregoing, whether or not permanently affixed to the Land, shall for the purpose of this Second Mortgage be deemed conclusively to be conveyed hereby, and as to all of the foregoing, whether personal property or fixtures, or both, a security interest is hereby granted by the Mortgagor and hereby attaches thereto, all as provided by the Iowa Uniform Commercial Code;

E. All and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to the Land, belonging or in any way appertaining thereto, and all claims or demands whatsoever of Mortgagor or any lessee, either in law or in equity, in possession or expectancy of, in and to the Land;

F. Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the buildings and improvements constructed on the Land;

G. All the rents, issues, uses, profits, condemnation awards, insurance proceeds and other rights and interests now or hereafter belonging or in any way pertaining to the Land and each and every lease, sublease and agreement described in the foregoing paragraph F and every right, title and interest thereunder, from the date of this Second Mortgage until the terms hereof are complied with and fulfilled; and

H. All machinery, apparatus, equipment, furnishings and other tangible personal property financed with the proceeds of the Loans, which may or might now or hereafter be or be deemed to be personally and not an integral part of the Land and all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing, and a security interest is hereby granted by the Mortgagor to the Mortgagee and hereby attaches thereto, all as provided by the Iowa Uniform Commercial Code.

TOGETHER with the reversions, remainders and benefits and all other revenues, rents, earnings, issues and income and profits arising or to arise out of or to be received or had of and from the properties hereby mortgaged or intended so to be or any part thereof and all the estate, right, title, interest and claims, at law or in equity which the Mortgagor now or may hereafter acquire or be or become entitled to in and to the aforesaid properties and any and every part thereof. The above described Mortgaged Property is hereby declared to be subject to the lien of this Second Mortgage as security for the payment of the aforementioned Secured Obligations.

TO HAVE AND TO HOLD all and singular, the Mortgaged Property, whether now owned or hereafter acquired, unto the Mortgagee, its successors and assigns forever; provided, however, that this Second Mortgage is upon the express condition that if the Mortgagor shall keep, perform and observe all the covenants and promises in the Development Agreement and in this Second Mortgage expressed to be kept, performed and observed by the Mortgagor, then this Second Mortgage and the rights hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.

As additional security for the payment of the amounts due under the Development Agreement, the Mortgagor hereby further covenants, warrants and agrees with the Mortgagee as follows:

Section 1. Terms Defined. All words and phrases defined in the Development Agreement shall have the same meaning in this Second Mortgage, unless the context clearly otherwise requires. In addition, the following words and phrases shall have the following meanings:

"Default Rate" means, with respect to amounts advanced pursuant to this Second Mortgage, an interest rate equal to nine percent (9%).

"Net Proceeds," when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and any extraordinary expenses of the Mortgagee) incurred in the collection of such gross proceeds.

"Permitted Encumbrances" means, as of any particular time:

(i) liens for ad valorem taxes and special assessments or installments thereof not then delinquent;

(ii) presently recorded utility, access and other easements and rights of way which do not underlie any existing or contemplated improvements, restrictions and exceptions that will not materially

interfere with or impair any activities permitted under applicable zoning ordinances or the operations expected to be conducted on the Mortgaged Property or elsewhere on the Land;

(iii) such minor defects, irregularities, encumbrances (exclusive of liens and judgments) and clouds on title as normally exist with respect to properties similar in character to the Mortgaged Property and as do not in the aggregate render title unmarketable or materially impair (a) the property affected thereby for the purpose for which it was acquired or is held by the Mortgagor or (b) the value of the Mortgaged Property as security for the obligations secured hereby;

(iv) zoning and building laws, ordinances or regulations and similar restrictions which are not violated by the Mortgaged Property or its current or contemplated uses;

(v) undetermined or inchoate liens and charges incidental to construction, which have not at the time been filed pursuant to law, including those of contractors, subcontractors, materialmen and suppliers with respect to the Project, expressly excluding any such liens or charges as and when same are filed, become determined or a choate lien or encumbrance upon the Mortgaged Property;

(vi) such other liens and charges at the time required by law as a condition precedent to the exercise of any privileges or licenses necessary to the normal operations of the Mortgagor which are not delinquent;

(vii) the First Mortgage; and

(viii) this Second Mortgage and any financing statements showing the Mortgagor as the debtor and the Mortgagee as the secured party.

Section 2. Title to the Mortgaged Property and the Status of the Lien of this Second Mortgage; Maintenance of Lien; Recording; Further Assurance; After-Acquired Property.

(a) The Mortgagor is lawfully seized of fee simple title in and to the Land and the lien created by this Second Mortgage is a second or subordinate lien on the Land and a second or subordinate lien on all improvements and other Mortgaged Property now and hereafter located on the Land, and the remainder of the above described Mortgaged Property, and Mortgagor will keep said premises and the rights, privileges and appurtenances thereto free from all lien claims of every kind on a parity with or superior to the lien of this Second Mortgage, and free from all subordinate financings of every kind and any liens thereof, except Permitted Encumbrances, and if any such lien be filed, the Mortgagor, within 30 days after such filing shall cause same to be discharged by payment or protected against by bonding or adequate reserves as agreed upon by the Mortgagor and the Mortgagee being maintained with the Mortgagee in escrow. The Mortgagor further agrees to protect and defend the title and possession of the Mortgaged Property so that this Second Mortgage shall be and remain a lien thereon prior to all liens other than Permitted Encumbrances until the obligations created under the Development Agreement secured hereby have been fully paid and discharged, or if foreclosure sale be had hereunder so that the

purchaser at said sale shall acquire good title in and to said Mortgaged Property free and clear of all liens and encumbrances, except Permitted Encumbrances;

(b) The Mortgagor will, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Second Mortgage so long as the obligations created under the Development Agreement secured hereby remain outstanding;

(c) The Mortgagor will, forthwith after the execution and delivery of this Second Mortgage and thereafter from time to time, cause this Second Mortgage and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the lien hereof upon, and the title of the Mortgagor to, the Mortgaged Property; and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments for such publication and protection. Except to the extent that it is exempt therefrom, the Mortgagor will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of this assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Second Mortgage and such instruments of further assurance;

(d) The Mortgagor will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers, financing statements, continuation statements and assurances as the Mortgagee reasonably may require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee the Mortgaged Property as now or hereafter constituted; and

(e) All right, title and interest of the Mortgagor in and to all improvements, betterments, renewals, substitutions, replacements and proceeds of the Mortgaged Property or any part thereof, hereafter constructed or acquired by the Mortgagor, which shall become a part of the Mortgaged Property, immediately upon such construction or acquisition, and without any further mortgaging, conveyance or assignment, shall become and be part of the Mortgaged Property and shall be subject to the lien of this Second Mortgage as fully and completely and with the same effect as though now owned by the Mortgagor, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments therefor and other instruments with respect thereto as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Second Mortgage.

Section 3. Obligations under the Development Agreement. The Mortgagor agrees to perform its obligations pursuant to the Development Agreement, including payment of all required amounts referred to in the Development Agreement and Promissory Notes in accordance with their terms.

Section 4. Taxes and Assessments. The Mortgagor agrees to promptly pay before the same become delinquent:

- (a) All taxes, liabilities, charges, impositions and assessments of every type or nature at any time levied and assessed upon or against the Mortgaged Property;
- (b) All other claims which might or could become a lien on the Mortgaged Property or any part thereof equal to or prior to the lien of this Second Mortgage except for Permitted Encumbrances;
- (c) All taxes, assessments or impositions upon this Second Mortgage or on the interest of the Mortgagee herein, or upon the Development Agreement or indebtedness secured hereby.

Provided, however, that no such tax, liability, charge, imposition, assessment or claim need be paid so long as the validity thereof is being contested in good faith by appropriate proceedings and in a manner not to jeopardize any of the Mortgaged Property or subject the Mortgagee to any liability and adequate reserves as agreed upon by the Mortgagor and the Mortgagee are maintained by the Mortgagor with the Mortgagee in escrow to assure full payment thereof.

The Mortgagor will not at any time create, allow to arise or exist any lien of whatsoever kind or nature equal to or prior to the lien of this Second Mortgage, or create, allow to arise or exist any subordinate financing of any kind or any lien thereof upon the Mortgaged Property, or any part thereof, save and except the First Mortgage and other Permitted Encumbrances or which, as herein provided, are permitted to remain unpaid.

The Mortgagor agrees to exhibit to the Mortgagee, at least annually and at any time upon request, official receipts showing payment of all taxes, assessments and charges which the Mortgagor is required or elects to pay hereunder ten days prior to the respective delinquency dates.

Section 5. Maintenance and Repair. The Mortgagor shall at all times maintain, preserve and keep the Mortgaged Property and every part thereof in good condition, repair and working order and will from time to time make all needful and proper repairs thereto and renewals, replacements, additions, betterments and improvements thereto so that the value and the operating efficiency thereof shall at all times be maintained and preserved. The Mortgagor will not commit or permit waste of the Mortgaged Property or any part thereof, and shall not remove or demolish nor alter or impair the design or structural character of any building, structure, fixture, or other improvements now or hereafter situated upon the Land without the prior written consent of the Mortgagee, and shall not do or permit any other act or thing that will damage the Mortgaged Property or cause the same or any part thereof to depreciate in value.

Section 6. Insurance Required to be Carried. The Mortgagor shall obtain or cause to be obtained and continuously maintained in effect, so long as the Development Agreement remains in effect, insurance covering the Mortgaged Property against loss or damage by fire, and such other risks as may be included in the broadest form of extended coverage insurance consistent with customary insurance practices in the industry, and, so long as the Development Agreement is in effect, consistent with the requirements of the Development Agreement.

All such insurance shall be taken out and maintained in generally recognized responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in Iowa, a certificate of each policy to be held by the Mortgagee and shall be carried in the names of the Mortgagor and the Mortgagee, as their respective interests may appear, and shall contain standard mortgagee clauses providing that all proceeds of insurance resulting from loss or damage covered thereby be paid to the Mortgagee, and that all claims may be adjusted by the Mortgagor with the approval of the Mortgagee. All such policies in the case of fire and extended coverage may be written with deductible amounts as now provided in the existing policies of the Mortgagor or as may be from time to time consistent with customary insurance practices in the industry.

Any insurance maintained by the Mortgagor pursuant hereto may be evidenced by one or more blanket insurance policies covering the Mortgaged Property and other property or assets of the Mortgagor, provided that any such policy shall specify that portion of the total coverage of such policy that is allocated to such Mortgaged Property and shall in all other respects comply with the requirements of this Section.

Upon the happening of any loss or damage covered by any such policy, from one or more of the causes insured against, the Mortgagor shall make due proof of loss containing a power of attorney in favor of the Mortgagee, as their respective interests appears, to endorse all drafts drawn for the payment thereof to the order of the Mortgagee, and to sign receipts therefor, and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the Mortgagee, as their respective interests appear.

Section 7. Environmental.

(a) Mortgagor represents and warrants that, except as disclosed in writing to Mortgagee: (i) the Mortgaged Property presently complies with, in all material respects, all applicable federal, state or local environmental, health and safety statutes and regulations with which noncompliance would have a material adverse effect on the Mortgaged Property; (ii) no part of the Mortgaged Property was ever used as a dump, sanitary landfill, junk yard or gasoline service station; (iii) the Mortgaged Property is not the subject of any judicial or administrative proceeding alleging the violation of any federal, state or local environmental, health or safety statute or regulation, which violation would have a material adverse effect on the Mortgaged Property; (iv) the Mortgaged Property is not the subject of a federal or state investigation regarding the need for any remedial action to respond to a release of any event involving the spill, release, leakage, seepage, discharge or cleanup of any asbestos, polychlorinated biphenyls, mold, radon, petroleum products and any other hazardous or toxic waste, substance or constituent (collectively, "Hazardous Substances") or other substance into the environment which remedial action would have a material adverse effect on the Mortgaged Property; (v) Mortgagor has received no summons, citations, directives, claims of lien, letters or other communications, written or oral, from any federal, state or local agency or department concerning the storing, releasing, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance on the Mortgaged Property or any

surrounding areas; (vi) Mortgagor has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of a Hazardous Substance or reporting a spill or release of any Hazardous Substances into the environment; (vii) no Hazardous Substances are located or have been released in, on or under the Mortgaged Property; and (viii) there are no underground storage tanks on the Mortgaged Property.

(b) Mortgagor covenants and agrees that it shall not, nor shall it permit others to, use the Mortgaged Property for the business of generating, transporting, storing, treating or disposing of any Hazardous Substances, nor shall it either take or fail to take any action which would reasonably result in a release of any Hazardous Substances from or onto the Mortgaged Property. Notwithstanding the foregoing, Mortgagor and tenants at the Mortgaged Property shall be entitled to store, use and dispose of Hazardous Substances in the ordinary course of their business, provided such storage, use and disposal is in compliance with all applicable local, state and federal laws, rules and regulations.

Section 8. Removal of Equipment; Release of Land. The Mortgagor may from time to time in its sole discretion and at its own cost and expense, install or place equipment and movable tangible personal property on the Mortgaged Property. The Mortgagor may remove such equipment and movable tangible personal property at any time at its own expense, provided the same shall not have been affixed or annexed to any building or structure constructed on the Land, it being understood and agreed that any such equipment or property so affixed or annexed to any building or structure constructed on the Land shall become part of the Mortgaged Property, regardless of whether it may have been acquired with funds other than the proceeds of the Grant.

The Mortgagor shall also have the right, from time to time and at its own cost and expense, to remove any fixtures comprising a portion of the Mortgaged Property so long as the same are replaced with fixtures of equal or greater value than the fixtures so removed or the value of the Mortgaged Property is not reduced as a result of such removal.

Section 9. Advances. Upon the Mortgagor's failure to comply with the preceding covenants and agreements with respect to payment of prior liens, liens on a parity with this Second Mortgage, taxes, assessments and charges, maintenance of insurance and repairs as required by the Development Agreement and this Second Mortgage, the Mortgagee without prejudice to any rights given herein, may make advances to perform the same in behalf of the Mortgagor, and in furtherance thereof, the Mortgagee may place or cause the Mortgaged Property to be placed in good condition, repair and working order; pay, settle or contest any such taxes, liabilities, charges and assessments; redeem the Mortgaged Property from any sale or forfeiture for any tax or assessment; purchase any tax title obtained or that shall be obtained thereon; pay any judgments based on such tax or assessment; pay, settle or contest any unpermitted lien on the Mortgaged Property and procure such insurance as may be necessary to comply with the provisions of this Second Mortgage and the Development Agreement, and the Mortgagor hereby agrees to repay all sums so advanced, on demand, with interest thereon, to the extent permitted by law, from the date advanced until paid at the Default Rate, and all sums so advanced with

interest as aforesaid until paid by the Mortgagor shall be immediately due and payable and be added to and become a part of any indebtedness or obligation secured hereby in such manner or order as the Mortgagee may desire or determine, having the benefit of the lien hereby created as a part thereof, and of its priority, but no such advances shall be deemed to relieve the Mortgagor from any default hereunder or impair any right or remedy consequent thereon, and the exercise of the rights to make advances granted in this Section shall be optional with the Mortgagee and not obligatory, and the Mortgagee shall in any case not be liable to the Mortgagor for failure to exercise any such right.

Section 10. Disposal of All or Part of the Mortgaged Property. Except as provided in the Development Agreement, and except for Permitted Encumbrances, neither the Mortgaged Property nor any portion thereof may be sold, assigned, transferred, or conveyed without the prior written consent of the Mortgagee.

Section 11. Events of Default Defined. The following shall be "events of default" under this Second Mortgage, and the term "event of default" and "default" shall mean, whenever they are used in this Second Mortgage, any one or more of the following events:

(a) The occurrence of an "event of default" under the Development Agreement, Promissory Note, or the First Mortgage; or

(b) The failure of the Mortgagor to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Second Mortgage (other than an occurrence which may sooner constitute an event of default under the Development Agreement) for a period of 30 days after written notice specifying such failure and requesting that it be remedied, given to the Mortgagor and the Lender under the First Mortgage by the Mortgagee, unless the Mortgagee shall agree in writing to an extension of such time prior to its expiration.

Provided, however, that no "event of default" shall exist hereunder and the Mortgagee will not be entitled to exercise any of its remedies against the Mortgaged Property unless and until the breach otherwise giving rise to the "event of default" hereunder remains uncured 30 days after the Mortgagor has been notified by the Mortgagee of such breach. Such cure (if executed within the 30-day time period) shall not consist of the payment of any accelerated amounts.

Section 12. Remedies on Default. Upon the occurrence of an event of default the Mortgagee may, at its option:

(a) by notice in writing to the Mortgagor, declare all amounts paid to Mortgagor under the Development Agreement immediately due and payable, upon the same terms and conditions and in the manner provided for in the Development Agreement;

(b) after notice in writing to the Mortgagor, institute proceedings for the collection at law or in equity of any and all indebtedness due under the provisions of the Development Agreement and secured by this Second Mortgage;

(c) after notice in writing to the Mortgagor, immediately cause this Second Mortgage to be foreclosed in the manner prescribed by law and, upon the commencement of foreclosure proceedings shall be entitled to have a receiver appointed at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Property (the provisions for the appointment of a receiver and assignment of rents hereby granted to Mortgagee being an express condition upon which the loans and payments hereby secured are made) for the benefit of the Mortgagee, with power to rent the same and to collect the rents, issues and profits of the Mortgaged Property, due and to become due, during the pendency of such foreclosure suit and in the case of a sale and deficiency, during the full statutory period of redemption whether there be redemption or not, as well as during any future times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits and shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. Any amount so collected by such receiver, whether prior to or following foreclosure, shall be applied under direction of the court to the costs and expenses of foreclosure and receivership, expense of insurance on the improvements, expense of repairs, taxes, assessments, and the balance shall be paid to the Mortgagee to be applied to the payment of the indebtedness secured by this Second Mortgage;

(d) after 10 days' notice in writing to the Mortgagor, at any time either by its agents, attorneys, employees or by a receiver to be appointed by a court and without regard to the adequacy of any security for the indebtedness hereby secured, either with or without process of law, forcibly or otherwise, enter upon and take possession of the Mortgaged Property or any part thereof, expel and remove any persons, goods or chattels occupying or upon the same, do and perform any act that the Mortgagee may deem necessary or proper to conserve the value thereof, and to collect and receive all rents, issues and profits therefrom, including those past due and unpaid, as well as those accruing thereunder, to manage and control the same, and to lease the same or any part thereof. The expense (including receiver's fees, if any, and compensation to any agent appointed by the Mortgagee, and counsel fees and costs and disbursements) incurred in taking possession and effecting such collection, shall be deemed a portion of the expense of this Second Mortgage secured hereby. Neither the collection of such rents, issues and profits and the application or release thereof as aforesaid shall cure or waive any default. After deducting all attorneys' fees and expenses incurred in connection herewith, the remaining net income shall be paid to the Mortgagee to be applied to payment of the indebtedness secured hereby.

In any suit to foreclose the lien of this Second Mortgage there shall be allowed and included in the decree for sale, to be paid out of the proceeds of such sale:

(a) All of the principal amounts to be reimbursed or paid under the Development Agreement, plus interest on the foregoing amount at the Default Rate from the date of default until paid;

(b) All items advanced or paid by the Mortgagee pursuant to this Second Mortgage, with interest thereon at the Default Rate per annum from the date of advancement until paid; and

(c) All reasonable court costs, attorneys' fees, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, and similar data with respect to title which the Mortgagee may deem necessary in connection with any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Second Mortgage or any indebtedness secured or in connection with preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose, whether or not actually commenced, and all such expenses shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate per annum from the date when paid or incurred by the Mortgagee until paid.

The rents, issues and profits collected up to the time of the foreclosure sale and the proceeds of any foreclosure shall be distributed and applied to the items described in (b) and (c) of this Section, in the order of their listing, then to (a). Any surplus of the proceeds of such sale shall be paid to the Mortgagor.

In the event of foreclosure of this Second Mortgage and sale of the property in sheriff's sale on special execution in said foreclosure proceedings, the period of one hundred eighty days for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to ninety days, provided the Mortgagee waives in said foreclosure proceedings any rights to a deficiency judgment against the Mortgagor which may arise out of the foreclosure proceedings.

If the aforesaid waiver of redemption is not effective, then it is further agreed that the period of redemption after a foreclosure of this Second Mortgage shall be reduced to sixty days if both of the following contingencies develop: (1) the Court finds affirmatively that said real estate has been abandoned by the Mortgagor and any persons personally liable under this Second Mortgage at the time of such foreclosure; and (2) the Mortgagee files an election to waive any deficiency judgment against the Mortgagor or its successors in interest in such action.

Nothing in this Section shall be deemed as a waiver of the rights of the Mortgagee to seek non-judicial foreclosure proceedings or foreclosure without redemption or any other foreclosure procedures as provided by the statutes of the State of Iowa, as amended from time to time.

Any sale or sales under this Section shall operate, after any applicable redemption period, to divest all estate, right, title, interest, claim or demand whatsoever, whether at law or in equity, of the Mortgagor in and to the premises, property, privileges and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor, its successors and assigns and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor, its successors or assigns.

Section 13. Litigation. If any action or proceedings be commenced, to which action or proceeding the Mortgagee is made a party by reason of the execution of this Second Mortgage, or in which the Mortgagee deems it necessary to appear or answer in order to uphold the lien of this Second Mortgage or the priority thereof or the possession of the Mortgaged Property, or otherwise to protect the interest of the City or the Mortgagee or security hereunder, all sums paid or incurred by the Mortgagee for attorneys' fees and other expenses in such action or proceeding shall be repaid by the Mortgagor, together with interest thereon to the extent permitted by law from the date of payment by the Mortgagee at the Default Rate per annum until paid and all such sums and the interest thereon shall be immediately due and payable and shall be added to and become a part of the indebtedness secured hereby, and be secured hereby, having the benefit of the lien hereby created and of its priority.

Section 14. Non-Waiver. Acceptance by the Mortgagee of any sum in payment or part payment of any indebtedness secured hereby after the same is due or after foreclosure proceedings are filed shall not constitute a waiver of the right to require prompt payment when due of all the sums so secured nor shall such acceptance cure or waive any remaining default or invalidate any foreclosure proceedings for any such remaining default or prejudice any of the rights of the Mortgagee under this Second Mortgage. Further, the failure of the Mortgagee to insist upon the strict performance of any of the covenants or agreements of the Mortgagor contained in this Second Mortgage, or the delay by the Mortgagee in the enforcement of any of its remedies herein contained upon any default of the Mortgagor shall never constitute a waiver of any requirement or obligation of the Mortgagor or right or remedy of the Mortgagee contained in or based upon said covenants or agreements.

Section 15. Remedies Cumulative. No remedy herein or in the Development Agreement conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition, no recovery of any judgment by the Mortgagee and no levy of any execution under any judgment upon the Mortgaged Property or upon any other property shall affect the lien created by this Second Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of the Mortgagee hereunder, but such lien, rights, powers or remedies of the Mortgagee shall continue unimpaired as before.

Section 16. Severability. In the event any provision of this Second Mortgage shall be held or deemed to be or shall, in fact, be illegal, inoperative, invalid or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same illegal, inoperative, invalid or unenforceable to any extent whatever.

Section 17. Security Interest. An express security interest is hereby granted to the Mortgagee in respect to any part of the Mortgaged Property which under Iowa law might now or hereafter be construed or considered as personal property, including without limitation the collateral described in granting clauses C, D, G and H hereof, and this Second Mortgage shall constitute a security agreement

in respect thereto. Upon default hereunder, Mortgagee shall have all the rights of a secured party under the Iowa Uniform Commercial Code.

Section 18. Maturity Date. For purposes of this Second Mortgage, termination of the obligations secured by the Second Mortgage shall occur upon the Termination Date set forth in the Development Agreement.

Section 19. Fixture Filing. From the date of its recording, this Second Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the collateral described in the Granting Clause D hereof, and for this purpose the name and address of the debtor is the name and address of the Mortgagor as set out in Section 24 herein, and the name and address of the secured party is the name and address of the Mortgagee as set out in Section 24 herein.

Section 20. Amendments, Changes and Modifications. The Mortgagor and the Mortgagee may from time to time enter into amendments, changes and modifications of this Second Mortgage, but only in writing signed by the Mortgagor and Mortgagee.

Section 21. Discharge of Lien. If the Mortgagor shall pay and discharge or provide, in a manner satisfactory to the Mortgagee, for the payment and discharge of the whole amount of all sums payable hereunder and under the Development Agreement, or shall make arrangements satisfactory to the Mortgagee for such payment and discharge, then and in that case all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor, and the estate, right, title and interest of the Mortgagee therein shall thereupon cease, terminate and become void; and this Second Mortgage, and the covenants of the Mortgagor contained herein, shall be discharged and the Mortgagee in such case on demand of the Mortgagor and at the Mortgagor's cost and expense, shall execute and deliver to the Mortgagor a proper instrument or proper instruments acknowledging the satisfaction and termination of this Second Mortgage, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to Keokuk Mills, all property, including money, then held by the Mortgagee hereunder.

Section 22. Execution in Counterparts. This Second Mortgage may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 23. Applicable Law. This Second Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

Section 24. Notices. Any notice, certificate, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to Mortgagor: Keokuk Mills, LLC
 Attn: Brad Mills
 3972 Main Street
 Keokuk, Iowa 52632

if to Mortgagee: City of Keokuk, Iowa
 City Hall
 415 Blondeau Street
 Keokuk, Iowa 52632
 Attn: City Clerk

Mortgagor and Mortgagee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

IN WITNESS WHEREOF, the Mortgagor has caused this Second Mortgage to be signed and sealed in its name and behalf by its duly authorized officer, all as of the date first above written.

KEOKUK MILLS, LLC

By: _____
Brad Mills, Member

STATE OF IOWA)
) SS
COUNTY OF LEE)

This instrument was acknowledged before me on _____, 2016 by Brad Mills, a Member of Keokuk Mills LLC, an Iowa limited liability company, who acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it voluntarily executed.

Notary Public in and for the State of Iowa

IN WITNESS WHEREOF, the Mortgagee has caused this Second Mortgage to be signed and sealed in its name and behalf by its duly authorized officer, all as of the date first above written.

CITY OF KEOKUK, IOWA

(SEAL)

By: _____
Mayor

By: _____
City Clerk

STATE OF IOWA)
) SS:
COUNTY OF LEE)

On this _____ day of _____, 2016 before me, a Notary Public in and for the State of Iowa, personally appeared Tom Marion and Jean Ludwig, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Keokuk, Iowa, a municipal corporation, and Mortgagee under the foregoing Second Mortgage and Security Agreement and Fixture Financing Statement; that the seal affixed to the foregoing instrument is the seal of said City; that said instrument was signed and sealed on behalf of said City by authority of its City Council, and Tom Marion and Jean Ludwig, as such officers, acknowledged the execution of the foregoing Second Mortgage and Security Agreement and Fixture Financing Statement to be the voluntary act and deed of said City by it voluntarily executed.

Given under my hand and seal of office, this _____ day of _____, 2016.

(SEAL)

Notary Public in and for the State of Iowa

EXHIBIT A to MORTGAGE

PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 65 NORTH, RANGE 5, WEST OF THE FIFTH PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT A RAILROAD IRON AT THE EAST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 480.1 FEET; THENCE NORTH 34 DEGREES 19 MINUTES WEST, 590.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES WEST, 60.3 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, BEING A RAILROAD IRON MARKING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAYS #61 AND #218 AND THE NORTHEAST PROPERTY CORNER OF THE KEOKUK DIECASTING CO. PROPERTY (FORMERLY OWNED BY EDWARD C. RENARD); THENCE SOUTH 59 DEGREES 41 MINUTES 30 SECONDS WEST, 1,234.00 FEET TO THE NORTHEASTERLY LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 30 DEGREES 53 MINUTES 30 SECONDS WEST WITH SAID RIGHT-OF-WAY LINE, 700.1 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 30 SECONDS EAST, 1,044.00 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAYS; THENCE SOUTH 49 DEGREES 03 MINUTES EAST WITH SAID RIGHT OF WAY 405.00 FEET; THENCE SOUTHEASTERLY 324.3 FEET ALONG A 1,372.5 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE PRECEDING COURSE, TO THE POINT OF BEGINNING, IN THE CITY OF KEOKUK, IN LEE COUNTY, IOWA.

Lee County, Iowa Parcel ID numbers 1044521152000190, 1044521152000120, and 1044521152000130

EXHIBIT E-2

UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Nathan Overberg (515) 243-7611
B. E-MAIL CONTACT AT FILER (optional) NOverberg@ahlerslaw.com
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Nathan Overberg Ahlers & Cooney, P.C. 100 Court Avenue, Suite 600 Des Moines, IA 50309

Print

Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad).

1a. ORGANIZATION'S NAME Keokuk Mills, LLC				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
3972 Main Street	Keokuk	IA	52632	USA

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad).

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME (or NAME OF ASSIGNEE OF ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME The City of Keokuk, Iowa				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
415 Blondeau Street	Keokuk, Iowa	IA	52632	USA

4. **COLLATERAL:** This financing statement covers the following collateral:

All Debtor's ownership interest in (i) that certain real property described on Exhibit A hereto, pursuant to that certain Second Mortgage and Security Agreement and Fixture Financing Statement executed by Debtor in favor of Secured Party dated _____, 2016; and (ii) that certain personal property described on Exhibit B hereto.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box:	
<input type="checkbox"/> Public-Finance Transaction	<input type="checkbox"/> Manufactured-Home Transaction
<input type="checkbox"/> A Debtor is a Transmitting Utility	<input type="checkbox"/> Agricultural Lien
<input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)

International Association of Commercial Administrators (IACA)

Exhibit A to UCC-1

PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 65 NORTH, RANGE 5, WEST OF THE FIFTH PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT A RAILROAD IRON AT THE EAST QUARTER CORNER OF SAID SECTION 15; THENCE NORTH 480.1 FEET; THENCE NORTH 34 DEGREES 19 MINUTES WEST, 590.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES WEST, 60.3 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, BEING A RAILROAD IRON MARKING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAYS #61 AND #218 AND THE NORTHEAST PROPERTY CORNER OF THE KEOKUK DIECASTING CO. PROPERTY (FORMERLY OWNED BY EDWARD C. RENARD); THENCE SOUTH 59 DEGREES 41 MINUTES 30 SECONDS WEST, 1,234.00 FEET TO THE NORTHEASTERLY LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 30 DEGREES 53 MINUTES 30 SECONDS WEST WITH SAID RIGHT-OF-WAY LINE, 700.1 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 30 SECONDS EAST, 1,044.00 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAYS; THENCE SOUTH 49 DEGREES 03 MINUTES EAST WITH SAID RIGHT OF WAY 405.00 FEET; THENCE SOUTHEASTERLY 324.3 FEET ALONG A 1,372.5 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE PRECEDING COURSE, TO THE POINT OF BEGINNING, IN THE CITY OF KEOKUK, IN LEE COUNTY, IOWA.

Lee County, Iowa Parcel ID numbers 1044521152000190, 1044521152000120, and 1044521152000130

Exhibit B to UCC-1

- A. All building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land described on Exhibit A and suitable or intended to be incorporated in any building, structure or other improvement now or hereafter standing on the Land;
- B. All fixtures and articles of personal property of every kind and nature that may integrally belong to, be or hereafter become an integral part of the Land, and whether attached or detached, and whether now owned or hereafter acquired by Debtor, including, but without limiting the generality of the foregoing, any and all partitions, carpeting, screens, awnings, storm windows, floor coverings, disposal units, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, maintenance equipment, and all heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and air-cooling equipment, gas and electric machinery, and all of the right, title and interest of the Debtor in and to any fixtures which may be subject to any title retention or security agreement superior in lien of Grantee, and all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing, all of which shall be construed as fixtures and will be conclusively construed, intended and presumed to be a part of the foregoing, whether or not permanently affixed to the Land;
- C. All and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to the Land, belonging or in any way appertaining thereto, and all claims or demands whatsoever of Debtor or any lessee, either in law or in equity, in possession or expectancy of, in and to the Land;
- D. Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the buildings and improvements constructed on the Land;
- E. All the rents, issues, uses, profits, condemnation awards, insurance proceeds and other rights and interests now or hereafter belonging or in any way pertaining to the Land and each and every lease, sublease and agreement described in the foregoing paragraph and every right, title and interest thereunder;
- F. All machinery, apparatus, equipment, furnishings and other tangible personal property which may or might now or hereafter be or be deemed to be personally and not an integral part of the Land and all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing.

EXHIBIT F
DEVELOPER ANNUAL CERTIFICATION
(due by October 15th as required under terms of Development Agreement)

The Developer certifies the following:

During the time period covered by this Certification, Developer is and was in compliance with Section 6.7 as follows:

- (i) attached is a complete and accurate copy of Developer's certification to the State with respect to compliance with the State Agreement Job Obligations (if applicable based on the date of required certification of the same to the State); and
- (ii) the undersigned officer of Developer is familiar with the terms and provisions of this Agreement and certifies that Developer is not in default in the fulfillment of any of the terms and conditions of this Agreement or if the signer is aware of any such Event of Default, said officer has disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20____.

Keokuk Mills, LLC

By: _____
Brad Mills, Member

By: _____
Kenny LeGrand,
CFO

EXHIBIT G

[State Agreement]

EXHIBIT H-1
PROMISSORY NOTE #1

_____, 2016

FOR VALUE RECEIVED, KEOKUK MILLS, LLC (the "Borrower") agrees and promises to pay to the order of the CITY OF KEOKUK (the "Lender") the sum of One Hundred Thousand Dollars (\$100,000), which is the total amount of the Forgivable Loan as defined in that certain Agreement for Private Development dated _____, 2016 between the parties ("Development Agreement"). The following are the terms of this Promissory Note #1 ("Note").

1. The entire principal balance hereof or the portion due and owing shall be payable to the Lender according to the terms of the Development Agreement, unless this Note is forgiven or cancelled pursuant to the terms of the Development Agreement. If Lender does not forgive or cancel this Note, or if Borrower has not repaid the amount of the principal or the portion due and owing, as defined by the Development Agreement, or if Borrower defaults under any term or condition of the Development Agreement, then Borrower will be in Default and subject to the consequences for Default in Paragraph 3 of this Note and the Development Agreement.
2. The Borrower may at any time prepay without penalty all or any part of the unpaid principal balance of this Note.
3. Any default under the Development Agreement shall be a Default hereunder and payment may be accelerated. Upon Default, the Lender may, at its option, exercise any and all rights and remedies available to it under this Promissory Note, or any applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Note with interest accruing at an annual rate of 4% beginning 30 days following the City's demand for payment until paid in full. The Borrower hereby waives presentment, demand for payment, notice of nonpayment, notice of dishonor, protest, and all other notices or demands in connection with the delivery, acceptance, performance, or Default of this Note.
4. If this Note is placed in the hands of an attorney for collection after Default in the payment of principal or interest, or if all or any part of the indebtedness represented hereby is proved, established, or collected in any court or in any bankruptcy, receivership, debtor relief, probate, or other court proceeding, the Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Lender in connection with the Lender's exercise of any or all of its rights and remedies under this Note, including, without limitation, court costs, and attorneys' fees.
5. No delay or failure of the Lender to exercise any power or right shall operate as a waiver thereof, and such rights and powers shall be deemed continuous; nor shall a partial

exercise preclude full exercise of such rights and powers. No right or remedy of the Lender shall be deemed abridged or modified by any course of conduct, and no waiver thereof shall be predicated thereon.

6. The obligations of the Borrower under the terms of this Note shall be binding on the successors-in-interest, legal representatives, and assigns of the Borrower, and shall inure to the benefit of the Lender and the Lender's successors-in-interest, legal representatives, and assigns.

7. This Note is also subject to the terms and conditions of the Development Agreement.

IMPORTANT: READ BEFORE SIGNING: The terms of this Note and the Development Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained may be legally enforced. You may change the terms of this Agreement only by another written agreement.

Dated as of _____, 2016.

KEOKUK MILLS, LLC

By: _____
Brad Mills, Member

ATTEST:

By: _____
Kenny LeGrand, CFO

STATE OF IOWA)
) SS
COUNTY OF LEE)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Brad Mills and Kenny LeGrand, to me personally known, who, being by me duly sworn, did say that they are the Member and CFO, respectively, of KEOKUK MILLS, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Brad Mills and Kenny LeGrand, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

EXHIBIT H-2
PROMISSORY NOTE #2

_____, 2016

FOR VALUE RECEIVED, KEOKUK MILLS, LLC (the "Borrower") agrees and promises to pay to the order of the CITY OF KEOKUK (the "Lender") the sum of One Hundred Thousand Dollars (\$100,000), which is the total amount of the No Interest Loan as defined in an Agreement for Private Development dated _____, 2016 between the parties ("Development Agreement"). The following are the terms of this Promissory Note #2 ("Note").

1. The principal balance shall be paid by Borrower in consecutive monthly installments of \$1667 that shall be due on the 1st day of January 2018, and the 1st day of each month thereafter until the 1st day of December, 2022, on which date (the "final payment date") the entire remaining indebtedness then unpaid and owing under this Promissory Note #2 shall be due and payable in full.
2. All payments on this Note shall be made by check or wire transfer to the City of Keokuk at 415 Blondeau Street, Keokuk, Iowa 52632, Attn: City Clerk, or at such other place in the United States of America as Lender shall designate to Borrower in writing.
3. The entire principal balance hereof or the portion due and owing shall be payable to the Lender according to the terms of the Development Agreement and this Note. If Borrower fails to repay the entire amount of the No Interest Loan due under this Note, or if Borrower defaults under any term or condition of the Development Agreement, then Borrower will be in Default and subject to the consequences for Default in Paragraph 5 of this Note and the Development Agreement.
4. The Borrower may at any time prepay without penalty all or any part of the unpaid principal balance of this Note.
5. Any default under the Development Agreement shall be a Default hereunder and payment may be accelerated. Upon Default, the Lender may, at its option, exercise any and all rights and remedies available to it under this Promissory Note #2, the Development Agreement, or any applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Note with interest accruing at an annual rate of 4% beginning 30 days following the City's demand for payment until paid in full, regardless of any prior forbearance, without demand or notice. The Borrower hereby waives presentment, demand for payment, notice of nonpayment, notice of dishonor, protest, and all other notices or demands in connection with the delivery, acceptance, performance, or Default of this Note.

6. If this Note is placed in the hands of an attorney for collection after Default in the payment of principal or interest, or if all or any part of the indebtedness represented hereby is proved, established, or collected in any court or in any bankruptcy, receivership, debtor relief, probate, or other court proceeding, the Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Lender in connection with the Lender's exercise of any or all of its rights and remedies under this Note, including, without limitation, court costs, and attorneys' fees.

7. No delay or failure of the Lender to exercise any power or right shall operate as a waiver thereof, and such rights and powers shall be deemed continuous; nor shall a partial exercise preclude full exercise of such rights and powers. No right or remedy of the Lender shall be deemed abridged or modified by any course of conduct, and no waiver thereof shall be predicated thereon.

8. The obligations of the Borrower under the terms of this Note shall be binding on the successors-in-interest, legal representatives, and assigns of the Borrower, and shall inure to the benefit of the Lender and the Lender's successors-in-interest, legal representatives, and assigns.

9. This Note is also subject to the terms and conditions of the Development Agreement.

IMPORTANT: READ BEFORE SIGNING: The terms of this Note and the Development Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained may be legally enforced. You may change the terms of this Agreement only by another written agreement.

Dated as of _____, 2016.

KEOKUK MILLS, LLC

By: _____
Brad Mills, Member

ATTEST:

By: _____
Kenny LeGrand, CFO

STATE OF IOWA)
) SS
COUNTY OF LEE)

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Brad Mills and Kenny LeGrand, to me personally known, who, being by me duly sworn, did say that they are the Member and CFO, respectively, of Keokuk Mills, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Brad Mills and Kenny LeGrand, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

Notary Public in and for the State of Iowa

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